

Introduced by Senator Figueroa

February 18, 2005

An act to add ~~Section 17045.5 to~~ Chapter 6 (commencing with Section 17300) to Part 2 of Division 7 of the Business and Professions Code, relating to unfair practices.

LEGISLATIVE COUNSEL'S DIGEST

SB 582, as amended, Figueroa. Retailers: ~~shelf placement fees disclosures.~~

Existing law prohibits specified types of business practices and provides various remedies for a violation of prohibited business practices.

This bill would require a retailer to disclose to a qualified supplier or manufacturer, upon its request, the placement fees or arrangements and trade information, as defined, relating to products of other suppliers or manufacturers that are placed on the retailer's premises and are similar in character to the product of the qualified supplier or manufacturer. The bill would authorize the assessment of a civil penalty in the amount of \$10,000 in an action brought by the Attorney General or by a qualified supplier or manufacturer for the violation of these provisions.

~~Existing law, the Unfair Practices Act, makes it unlawful for a person to engage in specified types of business practices. The act makes a violation of its provisions a crime and also provides a civil remedy to enjoin violations and to recover resulting damages.~~

~~This bill would make it unlawful under the act for a retailer to charge a supplier or manufacturer for placing a product on the retailer's shelf space or for maintaining that placement unless the retailer makes specified disclosures.~~

~~Because the bill would add to the provisions of the Unfair Practices Act, the violation of which is a crime, it would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~yes~~ no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 17045.5 is added to the Business and~~
2 ~~Professions Code, to read:~~

3 ~~SECTION 1. Chapter 6 (commencing with Section 17300) is~~
4 ~~added to Part 2 of Division 7 of the Business and Professions~~
5 ~~Code, to read:~~

6
7 ~~CHAPTER 6. RETAILER DISCLOSURES~~
8

9 ~~17300. The following definitions apply for the purposes of~~
10 ~~this chapter:~~

11 ~~(a) "Placement fees or arrangements" means a promise of~~
12 ~~shelf space, specific shelf placement, guaranteed advertising,~~
13 ~~payment to maintain a product on a shelf, slotting fees, or any~~
14 ~~other benefit provided by either the retailer or the supplier or~~
15 ~~manufacturer of a product for reasons other than the volume of~~
16 ~~sales of the product. A free product or a product discounted~~
17 ~~below 75 percent of its standard wholesale price is a placement~~
18 ~~fee unless a free or discounted product is provided in proportion~~
19 ~~to the amount of the product sold at its standard wholesale price.~~

20 ~~(b) "Qualified supplier or manufacturer" means a party who~~
21 ~~is capable of supplying the retailer with a product similar in~~
22 ~~terms of character, although not necessarily in terms of~~
23 ~~packaging, pack quantity, or price, to a product already sold by~~
24 ~~the retailer or sold by one of the retailer's competitors.~~

25 ~~(c) "Shelf" means a specific location within a retail facility~~
26 ~~where the same product is normally available to a consumer for~~

1 more than five consecutive days. “Shelf” does not include a
2 place where a product is displayed but is not available for
3 purchase by a consumer.

4 (d) “Similar product” means a product that is placed within
5 10 feet of customer travel of the product that is most similar to
6 the product produced by the qualified manufacturer or supplier.

7 (e) “Slotting fee” paid to a retailer means a lump-sum fee for
8 placement of a product on the shelf.

9 (f) “Trade information” means all retail pricing, sales volume,
10 and promotional information for all similar products within
11 specific stores, a grouping of stores, or stores owned by either
12 the retailer or other parties.

13 17301. A retailer shall, upon the request of a qualified
14 supplier or manufacturer, disclose the placement fees or
15 arrangements that the retailer assesses other suppliers or
16 manufacturers for placement of similar products.

17 17302. A retailer shall, upon the request of a qualified
18 supplier or manufacturer, disclose all trade information for
19 placement of a similar product if either of the following
20 conditions exists:

21 (a) Information pertaining to a specific product has been
22 shared by the retailer with a manufacturer or supplier that
23 neither supplies nor manufactures the product.

24 (b) Information pertaining to a specific product has been
25 shared with the retailer by a manufacturer or supplier or by a
26 potential supplier that neither manufactures nor supplies the
27 product.

28 17303. A violation of this chapter is subject to the assessment
29 of a civil penalty in the amount of ten thousand dollars
30 (\$10,000), that may be recovered in an action brought by the
31 Attorney General or by a qualified supplier or manufacturer. In
32 addition, the prevailing plaintiff shall be entitled to recover
33 reasonable attorney’s fees and court costs.

34 ~~17045.5. It is unlawful for a retailer to assess a supplier or~~
35 ~~manufacturer either of the following shelf placement charges~~
36 ~~without disclosing, at the time of offering to provide shelf~~
37 ~~placement space, in a clear and unequivocal manner, the amount~~
38 ~~of the charge the retailer assesses other suppliers or~~
39 ~~manufacturers for placement of similar products on its shelf~~
40 ~~space:~~

1 ~~(a) A lump-sum fee, referred to as a “slotting allowance,” for~~
2 ~~placement of the product or commodity on the retailer’s shelf~~
3 ~~space.~~

4 ~~(b) A fee, referred to as a “pay-to-stay fee,” for continued~~
5 ~~placement of the product or commodity on the retailer’s shelf~~
6 ~~space.~~

7 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
8 ~~Section 6 of Article XIII B of the California Constitution because~~
9 ~~the only costs that may be incurred by a local agency or school~~
10 ~~district will be incurred because this act creates a new crime or~~
11 ~~infraction, eliminates a crime or infraction, or changes the~~
12 ~~penalty for a crime or infraction, within the meaning of Section~~
13 ~~17556 of the Government Code, or changes the definition of a~~
14 ~~crime within the meaning of Section 6 of Article XIII B of the~~
15 ~~California Constitution.~~